

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Complaint of WorldCom Technologies, Inc.
against New England Telephone and Telegraph
Company d/b/a Bell Atlantic-Massachusetts

D.T.E. 97-116

**INITIAL COMMENTS BY AT&T REGARDING THE FCC's APRIL 2001 ORDER
ON RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC**

In a Hearing Officer memorandum dated May 23, 2001, the Department has sought
“comments from interested persons on the effect of the FCC’s Order on Remand

¹ on the issue of reciprocal compensation for ISP-bound traffic in Massachusetts.” AT&T
Communications of New England, Inc., on behalf of itself and its affiliated companies (including
Teleport Communications-Boston, Inc., Teleport Communications Group, and ACC National
Telecom Corp.) (collectively “AT&T”) submits the following comments regarding the effect of
the FCC’s order.

As explained below, AT&T respectfully urges the Department to take note of the following
three points: (1) the FCC’s *Order on Remand* is being challenged in court and may never take
effect; (2) if the FCC’s *Order on Remand* does take effect, one result would be that the
Department no longer has jurisdiction over intercarrier compensation for ISP-bound traffic; and
(3) furthermore, nothing in the FCC’s *Order on Remand* relieves Verizon of its existing

¹ “Order on Remand and Report and Order” No. FCC 01-131, *Implementaiton of the
Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98,
and *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68 (released April
27, 2001) (“Order on Remand”).

contractual obligations to pay reciprocal compensation for ISP-bound traffic.

I. THE FCC’S ORDER ON REMAND HAS NOT YET TAKEN EFFECT, IS BEING APPEALED, AND MAY NEVER TAKE EFFECT.

The Department should not assume that the FCC’s *Order on Remand* will take or remain in effect. Petitions challenging the FCC’s *Order on Remand* have been filed with the United States Court of Appeals for the District of Columbia Circuit. Petitions have been filed by: AT&T; Core Communications, Inc.; e.spire Communications, Inc.; KMC Telecom Holdings, Inc.; Sprint; and WorldCom (Docket No. 01-1218 and consolidated cases). Consistent with these judicial appeals, Core Communications, Inc., has petitioned the FCC for a stay of its *Order on Remand* pending judicial review, and various carriers have filed comments in support of that petition for a stay. The FCC’s *Order on Remand* is likely to be reversed by the D.C. Circuit, just as the FCC’s previous attempt to deny reciprocal compensation for ISP-bound traffic was reversed.

II. THE FCC’S ORDER ON REMAND WOULD REMOVE THE DEPARTMENT’S AUTHORITY TO RULE ON INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC.

If the FCC’s *Order on Remand* were permitted to take effect and then withstood all legal challenges, one result would be that the Department would no longer have authority to take further action in this proceeding.

The FCC has “determine[d] that intercarrier compensation for ISP-bound traffic is within the jurisdiction of [the FCC] under section 201 of [Title 47 of the United States Code].” *Order on Remand* ¶ 4; see also ¶ 65. Because the FCC has “exercise[d] [its] authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic ...

state commissions will no longer have authority to address this issue.” *Order on Remand* ¶ 82.

In sum, the FCC concluded that only it, and not state commissions, has jurisdiction to establish the cost recovery mechanism for the exchange of such traffic.

III. THE FCC’S *ORDER ON REMAND* DOES NOT SAVE VERIZON FROM EXISTING CONTRACTUAL OBLIGATIONS TO PAY RECIPROCAL COMPENSATION.

Finally, the Department should note that the FCC’s *Order on Remand* would not do anything to save Verizon from its existing contractual commitments to pay reciprocal compensation for ISP-bound traffic. To the contrary, the FCC has expressly stated that its recent order “does not alter existing contractual obligations.” *Order on Remand* ¶ 82.

In so doing, the FCC has echoed the Department’s prior guidance on this issue. The Department has noted that it will not act “to save contracting parties from later-regretted commercial judgments,” and that it will therefore not do anything to save Verizon from existing contractual obligations to pay reciprocal compensation. *D.T.E. 97-116-C* at 27 n.29 (May 19, 1999).

The Department has never addressed Verizon’s contractual obligation under existing interconnection agreements (“ICAs”) to pay reciprocal compensation for ISP-bound traffic. To the contrary, the Department emphasized that it was not resolving the merits of the dispute between the original parties, Verizon and WorldCom (or the related disputes between Verizon and virtually every other competitive local exchange carrier with which it had signed an ICA) regarding Verizon’s contractual obligation to pay reciprocal compensation on ISP-bound traffic. *D.T.E. 97-116-C* at 25-27 & n.29 (May 19, 1999). The Department stressed that, “[u]nsatisfying as it may be to say so, all that remains is a now-unresolved dispute.” *D.T.E. 97-*

116-C at 26.

More recently, the Department has held that parties must be able to enforce signed ICAs, and that subsequent Department orders shall almost never override terms in an existing ICA. See D.T.E. 98-57 at 20-23 (March 24, 2000). The Department emphasized that “CLECs should be able to rely with certainty on their interconnection agreements.” *Id.* at 22.

To date, AT&T has refrained from prosecuting a claim regarding Verizon’s breach of contract in refusing to pay reciprocal compensation, in the hope that the FCC would take action that makes such litigation unnecessary. However, AT&T has reserved and continues to reserve all rights to protect its legal interests and to seek full relief for Verizon’s breach of contract in failing to pay reciprocal compensation owed for traffic originated by Verizon and terminated to AT&T in Massachusetts.

